IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Vallabh and others.
vs.
Smt. Lehari

S.B.CIVIL SECOND APPEAL NO.263/2001 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 1.6.2001 PASSED BY SHRI T.H. SAMMA, ADDITIONAL DISTRICT JUDGE NO.3, UDAIPUR IN APPEAL NO.3/2001.

DATE OF JUDGMENT ::: 8.12.2005

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. Rajesh Panwar, for the appellants.
Mr. S Saruparia, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties.

The plaintiff/respondent Smt. Lehari Bai filed a suit for prohibitory as well as mandatory injunction before the trial court with the allegation that the plot in dispute was purchased by her for a consideration of Rs.2,001/- in

Samwat Year 2030. She raised construction of house over the plot and also obtained the electricity connection. The defendants who are the near relatives of the plaintiff forcible started demolishing the house of the plaintiff with the help of large number of persons. She filed the suit for prohibitory and mandatory injunction and also stated in the plaint that she first approached the police and in front of the police, the defendants agreed that they will not demolish the house but immediately thereafter, they started demolishing the house and the whole of the house has been demolished. He also pleaded that her household goods are lying in front of the property. The plaintiff further pleaded that the defendants wanted to raise construction immediately, therefore, she is filing the suit. In the suit, she prayed that the defendants be restrained from dispossessing the plaintiff and further prayed that the defendants be directed to restore the house and in addition to above, she specifically pleaded that in case, during pendency of the suit, if defendants take any steps, appropriate relief may be granted to the plaintiff.

The defendants submitted written statement and denied the plaint allegations with a plea that the land in question is agriculture land and it was never purchased by the plaintiff. After denying the plaint allegations in additional pleas, the defendants submitted that the plaintiff is mother of the defendant no.3 and the mother-in-law of the defendant no.2. Because of some dispute and after the death of plaintiff's husband, the defendant no.3

allowed her mother to live in the house and she lived there for 8-10 years but after that because of development of bad relations between the plaintiff and defendants, the defendants did not allow the plaintiff to live in the house and, therefore, the plaintiff, since last 8-10 years, is living with her daughter Pushpa Bai and Kusum Bai. In addition to the above facts, the plaintiff was not in possession of the house in dispute at the time of filing of the suit or within 8-10 years from the filing of the suit. However, the defendants submitted that in case, the plaintiff obtained electricity connection in the house, then that cannot create any right in favour of the plaintiff. The trial court framed the issues and one of the issue was about the fact whether the plaintiff purchased the house in dispute or not. This issue was decided against the plaintiff but both the courts on the basis of the evidence not only of the plaintiff but on the basis of the evidence produced by the defendants themselves, reached to the conclusion that the plaintiff was in settled possession of the house in dispute and she was dispossessed forcible by the defendants. The trial court decreed the suit of the plaintiff on 9.11.2000 and directed the defendants to re-erect the house and the defendants shall not interfere in the peaceful possession of the plaintiff in the house. However, the first appellate court modified the decree after holding that the plaintiff failed to prove that the defendants demolished the house but decreed the suit for possession in favour of the plaintiff maintaining the decree for prohibitory injunction of the trial court.

Hence, this second appeal.

Learned counsel for the appellant vehemently submitted that the plaintiff filed the suit for injunction only and the first appellate court granted the decree for possession which could not have been granted because neither the plaintiff prayed for decree of possession nor paid any court fees for the relief.

Learned counsel for the appellant also submitted that the courts below decided the issue no.1 against the plaintiff, therefore, the plaintiff is not the owner of the property and, therefore, she is a trespasser and no decree for possession can be passed in favour of the trespasser.

Learned counsel for the appellant relied upon the judgment of the Hon'ble Apex Court delivered in the case of Tamilnadu Housing Board vs. A. Viswam (dead) by LRs. reported in (1996) 8 SCC 259 wherein the Hon'ble Apex Court held that a trespasser cannot claim injunction against the owner. Learned counsel for the appellant also relied upon the judgment of this Court delivered in the case of Gurubachan Singh vs. Smt. Premlata and ors. reported in 1995 DNJ (Raj.) 640 wherein also, it has been held that the equitable relief cannot be granted in favour of trespasser. In this judgment, this Court also held that the trespasser can claim relief against the third party not having better title.

I have considered the submissions of the learned counsel for the appellant and perused the record as well as

the reasons given by the two courts below.

It will be worthwhile to mention here that the plaintiff's possession for 8-10 years is an admitted fact as it has been admitted by the defendants in written statement. This period of 8-10 years, according to the defendants, is much prior to filing of the suit by the plaintiff. This fact has been contradicted by the defendants themselves by producing the witnesses who clearly stated that the plaintiff was forcible dispossessed and her household goods were thrown out by the defendants. The plaintiff apprehending demolition of her entire house filed the suit for injunction and she could not anticipate what steps the defendants are proposing to take, therefore, she not only prayed that the possession be restored but the defendants be directed to reconstruct the house and she also specifically prayed that in case, anything happens or anything is done by the defendants, then appropriate relief may be granted to the plaintiff. In these circumstances, if the two courts below considered the relief, in the facts of the case, to be granted to the plaintiff and granted just relief, then the courts below have not exceeded their jurisdiction nor granted the prayer beyond the prayer made by the plaintiff.

It is true that the issue no.1 about the title of the property was decided against the plaintiff but at the same time, she got possessory title by remaining in possession for such a long period which according to the defendants

themselves is 8-10 years and in view of the fact that she had electricity connection in her name in the house. The judgments relied upon by the learned counsel for the appellant have no application in the facts of the case because in these judgments, it has been held that the trespasser cannot claim injunction against the owner. Here in this case, defendants not only failed to prove that the plaintiff is trespasser but in fact, the defendants clearly admitted that the plaintiff was in settled and peaceful possession. It is nobody's case that the plaintiff ever encroached upon the land, therefore, even if the defendants' case is accepted, then the plaintiff was in permissive possession than also she could not have been thrown out in the manner in which she has been thrown out highhandedly by the defendants and which fact has been admitted by the defendants' own witnesses. In view of the above, the relief which has been granted by the courts below as the relief falling within the scope of grant of mandatory injunction and even if the plaintiff has not filed the suit for possession, still the court had jurisdiction to pass the decree in the manner in which it has been passed. It is true that in proper facts and circumstances, the suit for possession is necessary but in this case, the plaintiff pleaded that despite demolition of her house, she is in possession of the property. To protect the possession and to make the position clear and to avoid the dispute, if the Court has specifically passed the decree to secure the possession of the plaintiff, the Courts have justly granted the prayer to the plaintiff.

There is no force in the submission of learned counsel for the appellants that the land in question is an agriculture land because this fact has not been decided by the two courts below in favour of the defendants and this fact became irrelevant in second appeal.

In view of the above, I do not find any merit in the appeal. No substantial question of law is involved in this appeal, therefore, this appeal deserves to be dismissed, hence, dismissed.

(PRAKASH TATIA), J.

S.Phophaliya